United Nations A/62/275

General Assembly

Distr.: General
17 August 2007

Original: English

Sixty-second session
Item 72 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, submitted in accordance with Human Rights Council resolution 5/1.

* A/62/150.

07-46316 (E) 130907

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The right of the Palestinian people to self-determination, which has been recognized by the political organs of the United Nations, the International Court of Justice and Israel, is to be exercised in the West Bank, East Jerusalem and Gaza, which together form the Palestinian self-determination unit. The exercise of this right is threatened by the separation of the West Bank and Gaza resulting from the seizure of power by Hamas in Gaza in June 2007 and seizure of power by Fatah in the West Bank. Every effort must be made by the international community to ensure that Palestinian unity is restored. Without unity the right to self-determination cannot be fully realized.

This year witnessed the fortieth anniversary of the occupation of the Palestinian territory. Israel's obligations as occupying Power have not diminished as a result of the prolonged nature of the occupation. On the contrary, these obligations have increased as a result of Israel's illegal actions within the occupied territory. It is suggested that the International Court of Justice be asked to render an advisory opinion on the legal consequences of prolonged occupation for the occupied people, the occupying Power and third States.

Israel remains an occupying Power in respect of Gaza. Arguments that Israel ceased its occupation of Gaza in 2005 following the evacuation of its settlements and the withdrawal of its troops take no account of the fact that Israel retains effective control over Gaza by means of its control over Gaza's external borders, airspace, territorial waters, population registry, tax revenues and governmental functions. The effectiveness of this control is emphasized by regular military incursions and rocket attacks. Israel's conduct in respect of Gaza must therefore be measured against the standards of international humanitarian law and human rights law. In the past year Israel has violated important norms of international humanitarian law and human rights law by undertaking military action against civilian targets and by creating a humanitarian crisis by means of the closure of Gaza's external borders. In law Israel is obliged to cease these actions. Other States that are a party to the siege of Gaza are likewise in violation of international humanitarian law.

The human rights situation in the West Bank may improve as a result of the rapprochement between the emergency Government of President Abbas, under the prime ministership of Salam Fayyad, and Israel, the United States and the Quartet, following the takeover of Gaza by Hamas. Already 255 prisoners have been released, US$ 119 million of Palestinian tax funds transferred to the Palestinian Authority and amnesty granted to 178 Fatah militants. Despite these moves, and promises of further measures to improve the lives of Palestinians from Israel, the United States and the Quartet, large-scale violations of human rights and international humanitarian law continue in the West Bank and East Jerusalem. The construction of the wall (or barrier) continues; settlements continue to expand; checkpoints remain in force; the Judaization of Jerusalem continues; and the de facto annexation of the Jordan Valley is unaffected. Military incursions, accompanied by arrests, continue unabated. House demolitions remain a feature of life in the West Bank and East Jerusalem.

The Secretary-General of the United Nations has established a Board to register Palestinian claims for damages arising from the construction of the wall. Serious questions are asked about how the Board will operate.

Violations of human rights and international humanitarian law, together with Israel's refusal to transfer tax moneys due to the Palestinian Authority and the imposition of banking restrictions by the United States, have had a serious impact on the humanitarian situation in the West Bank. Poverty and unemployment have reached their highest level; health and education are undermined by military incursions, the wall and checkpoints; and the entire social fabric of society is threatened.

There are some 10,000 Palestinian political prisoners in Israeli jails and prisoners are treated in an inhuman and degrading manner. The extrajudicial killing of suspected militants by means of rocket fire continues unabated.

While United Nations agencies and personnel advance development and protect human rights on the ground in the Occupied Palestinian Territory, serious questions are today asked about the role of the Secretary-General in the Quartet. The Quartet, comprising the United Nations, the European Union, the Russian Federation and the United States, is today largely responsible for furthering the peace process in the Occupied Palestinian Territory. This body, which is in practice led by the United States, has shown little regard for promoting human rights or international humanitarian law and is indirectly responsible for imposing economic sanctions on the Occupied Palestinian Territory. In May 2007 the former United Nations Special Coordinator for the Middle East Peace Process and Envoy to the Quartet, Alvaro de Soto, declared that the Quartet, under the influence of the United States, had failed the Palestinian people and called upon the Secretary-General to seriously reconsider membership of the United Nations in the Quartet.

The Special Rapporteur appeals to the Secretary-General to press the Quartet to be guided by human rights law, international humanitarian law, the advisory opinion of the International Court of Justice and considerations of fairness and even-handedness in its dealings with the Occupied Palestinian Territory. If this cannot be done the United Nations should withdraw from the Quartet.

Finally, the Special Rapporteur calls upon the General Assembly to request the International Court of Justice to give a further advisory opinion on the consequences of prolonged occupation for the occupied people, the occupying Power and third States.

Contents

		Paragraphs	*Page*
I.	Introduction	1–2	5
II.	Self-determination	3–5	5
III.	Israel's occupation of the Occupied Palestinian Territory, with special reference to Gaza	6–24	6
IV.	Human rights in the West Bank and East Jerusalem	25–42	12
	A. The wall	27–32	13
	B. Settlements and settlers	33–34	15
	C. The Jordan Valley	35–36	16
	D. Checkpoints and roadblocks as obstacles to freedom of movement	37–38	16
	E. Military incursions	39	17
	F. Humanitarian situation	40–42	17
V.	Violation of the prohibition on arbitrary detention, inhuman treatment and extrajudicial executions	43–45	18
VI.	The role of the United Nations in the protection of human rights in the Occupied Palestinian Territory	46–50	19
VII.	Recommendations	51–57	21

I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory (OPT) is to investigate, study and report on the extent to which human rights are observed in the Occupied Palestinian Territory. His mandate does not require him to report on the politics of OPT. Indeed he has been admonished by some States, following previous reports, for exceeding his mandate by trespassing on the political terrain. He is therefore fully aware of this limitation in respect of his mandate. On the other hand, there is a twilight zone between human rights and politics, one within which the two interact, and one which must fall within the concern of the present mandate. Unhappily, this area has grown in size and continues to grow. Today most of the subjects designated as "political" have a human rights dimension. The political rift between the West Bank and Gaza, the economic strangulation of Gaza, the ongoing seizure of Palestinian land by the construction of the wall and the expansion of settlements, incursions by the Israel Defense Forces (IDF) into Gaza and the West Bank, the creeping annexation of the Jordan Valley, the treatment of refugees, the roadblocks and checkpoints of the West Bank and the Judaization of Jerusalem are all political issues which at the same time raise important points of human rights law and international humanitarian law. The political actions of international organizations, such as the United Nations and the European Union, also have implications for human rights. Issues of this kind cannot be ignored if an honest account is to be given of the present human rights situation in the Occupied Palestinian Territory.

2. The present report will focus on four subjects: the right of self-determination of the Palestinian people; the Israeli occupation of the West Bank, Gaza and East Jerusalem; the violation of human rights and international humanitarian law by the occupying Power; and the action of international organizations in the furtherance and denial of human rights. The Special Rapporteur has visited the Occupied Palestinian Territory twice a year since assuming his mandate in 2001. He last visited the region in December 2006, but has unfortunately been unable to visit the Occupied Palestinian Territory since then. He plans, however, to visit the Occupied Palestinian Territory before presenting this report.

II. Self-determination

3. That the Palestinian people have the right of self-determination cannot be disputed. Such a right has been recognized by the Security Council, the General Assembly, the International Court of Justice and Israel itself. In the advisory opinion of 9 July 2004 of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* the International Court of Justice declared that "[A]s regards the principle of the right of peoples to self-determination, the Court observes that the existence of a 'Palestinian people' is no longer in issue."[1] On 1 December 2006 the General Assembly adopted resolution 61/25 in which it stressed the need for "the realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State". (See also resolution 61/152 of 19 December 2006.)

[1] *Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 118.

4. The territory of the self-determination unit within which this right is to be exercised clearly includes the West Bank, East Jerusalem and Gaza. This is implicit in much of the language of United Nations resolutions that proclaim the right of the Palestinian people to self-determination. It is placed beyond all doubt by the fact that the right to self-determination of the Palestinian people is asserted in the context of a "two State solution" that is, one "where two States, Israel and Palestine, live side by side within secure and recognized borders".[2] In asserting such a solution the Security Council and the General Assembly contemplate one Palestinian State for the Palestinian people. This is emphasized by the calls for "the establishment of a permanent physical link between the Gaza Strip and the West Bank".[3]

5. The right of the Palestinian people to self-determination has been denied and obstructed for nearly 60 years by Israel. Now it is threatened by the political separation of the West Bank and Gaza resulting from the seizure of power in Gaza by Hamas in June 2007 followed by the seizure of power in the West Bank by Fatah. The carefully brokered Government of Palestinian national unity has been destroyed by the internecine conflict in May and June in which some 200 Palestinians, mostly belonging to Fatah, were killed. At the time of writing (August), there is no immediate prospect of reconciliation between Hamas and Fatah. This is a matter of deep concern to the Special Rapporteur as the right to self-determination is a central and core human right. It must also be a matter of concern to the Quartet, the United Nations, the European Union and other international institutions committed to the realization of the right of the Palestinian people to self-determination. Such a concern should not take the form of support — political, economic or military — for one faction at the expense of the other but rather for reconciliation between the two factions so that the right to self-determination may be realized within the 1967 borders of the Palestinian self-determination unit, that is including the West Bank, East Jerusalem and Gaza. Suggestions that the West Bank be politically tied to Jordan or Gaza linked to Egypt would seriously undermine the right of the Palestinian people to self-determination as it has evolved over the past decades. Unhappily, the Quartet (which embraces the United Nations) is, at the time of writing, making little attempt to promote Palestinian national unity. On the contrary, it pursues a divisive policy of preferring one faction over the other; of speaking to one faction but not the other; of dealing with one faction while isolating the other.

III. Israel's occupation of the Occupied Palestinian Territory, with special reference to Gaza

6. The Palestinian Territory has been occupied for so long — 40 years — that there is a tendency in certain quarters to overlook this reality and to treat the Occupied Palestinian Territory as an "unoccupied" entity. This leads to the perception of Israel and Palestine as two States poised against each other, with Israel as the victim and Palestine as a neighbouring aggressive, terrorist State. This, of course, is very far from the truth. The Palestinian Territory, including the West Bank, East Jerusalem and Gaza, remains occupied territory, occupied by Israel.

[2] Security Council resolutions 1397 (2002) and 1515 (2003); General Assembly resolution 61/25.
[3] General Assembly resolution 61/25.

Insofar as there is a "victim" party, it is Palestine as inevitably an occupied party has such a status vis-à-vis the occupier.

7. That Israel is the occupier of the Palestinian Territory, subject to the obligations imposed by international law as an occupying Power, was reaffirmed by the International Court of Justice in the *Wall* opinion when it held that the Palestinian territories (including East Jerusalem) "remain occupied territories and Israel has continued to have the status of an occupying Power".[4] The consequence of this, said the International Court, was that the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) applies to the Occupied Palestinian Territory, as do the International Covenants on Human Rights of 1966.[5]

8. Israel's obligations have not diminished as a result of the prolonged nature of the occupation.[6] On the contrary, they have increased as a result of the nature of Israel's occupation which has given rise to the argument that Israel's occupation has over the years become tainted with illegality.[7] In these circumstances, the Special Rapporteur proposed in his report to the Human Rights Council in March 2007 (A/HRC/41/17) that the International Court of Justice be asked to give a further advisory opinion, on the legal consequences of prolonged occupation. The Court might be asked to consider the legal consequences of a prolonged occupation that has acquired some of the characteristics of apartheid and colonialism and has violated many of the basic obligations imposed on an occupying Power. Has it ceased to be a lawful regime, particularly in respect of "measures aimed at the 'occupant's own interests'".[8] And, if this is the position, what are the legal consequences for the occupied people, the occupying Power and third States? Such an opinion might not only produce legal clarity on the consequences of Israel's occupation of the Palestinian Territory but also put further pressure on the international community to compel Israel to comply with its obligations as occupying Power. It is true that the 2004 advisory opinion on the wall has to date had little effect. However, it must be remembered that the United Nations requested four advisory opinions from the International Court of Justice to guide it in its approach to South Africa's occupation of South West Africa/Namibia.

9. The *Wall* advisory opinion was concerned with the construction of a wall in the West Bank and East Jerusalem. As the Court was not asked to pronounce on the legal status of Gaza it, possibly, confined its reaffirmation of the occupied status of the Occupied Palestinian Territory to the West Bank and East Jerusalem.[9] This fact, together with the evacuation of Israeli settlements and the withdrawal of the permanent IDF presence from Gaza in 2005, has given rise to the argument that Gaza is no longer occupied territory. On 15 September 2005 Prime Minister Sharon told the General Assembly that Israel's withdrawal from Gaza meant the end of its

---

[4] *Advisory Opinion*, op. cit., para. 78.

[5] Ibid., paras. 101, 111 and 112.

[6] See A. Roberts, "Prolonged military occupation: the Israeli occupied territories since 1967" *American Journal of International Law*, vol. 84 (1990), pp. 55-57 and 95.

[7] O. Ben-Naftali, A. M. Gross and K. Michaeli, "Illegal occupation: framing the Occupied Palestinian Territory", *Berkeley Journal of International Law*, vol. 23, No. 3 (2005), pp. 551-614.

[8] E. Benvenisti, *The International Law of Occupation* (Princeton, Princeton University Press, 1993), p. 216.

[9] *Advisory Opinion*, op. cit., para. 101.

responsibility for Gaza. Subsequently, in submissions before the Israeli High Court, the Government of Israel has taken the position that it no longer occupies Gaza and that it is no longer bound by international humanitarian law in its actions vis-à-vis Gaza residents. Recently, on 8 July, Israel's Ministerial Committee for Legislative Affairs approved a draft bill recognizing Gaza as "a foreign entity". Essentially, Israel's position is that responsibility for the civilian population of Gaza, including the functioning of Gaza's economy, is the sole responsibility of the Palestinian Authority.

10. The argument that Israel's occupation of Gaza has come to an end is not supported by law or fact. This is emphasized by a study entitled *Disengaged Occupiers: The Legal Status of Gaza*, written by Sari Bashi and Kenneth Mann of Gisha, The Legal Center for Freedom of Movement, an Israeli non-governmental organization (NGO), published in January 2007. This study shows, convincingly, that the test under international law for deciding whether a territory is occupied is not the permanent ground presence of the occupying Power's military in the occupied territory, but effective control.[10] Technological developments have made it possible for Israel to assert control over significant aspects of civilian life in Gaza without a permanent troop presence. This is done by:

(a) **Substantial control of Gaza's six land crossings**. The Erez crossing is effectively closed to Palestinians wishing to cross to Israel or the West Bank. The Rafah crossing between Egypt and Gaza, which is regulated by the Agreement on Movement and Access entered into between Israel and the Palestinian Authority on 15 November 2005 (brokered by the United States), has been closed by Israel for lengthy periods since June 2006. The main crossing for goods at Karni is strictly controlled by Israel and since June 2006 this crossing too has been largely closed, with disastrous consequences for the Palestinian economy;

(b) **Control through military incursions, rocket attacks and sonic booms**. Sections of Gaza have been declared "no-go" zones in which residents will be shot if they enter;

(c) **Complete control of Gaza's airspace and territorial waters**;

(d) **Control of the Palestinian Population Registry**. The definition of who is "Palestinian" and who is a resident of Gaza and the West Bank is controlled by the Israeli military. Even when the Rafah crossing is open, only holders of Palestinian identity cards can enter Gaza through the crossing; therefore control over the Palestinian Population Registry is also control over who may enter and leave Gaza. Since 2000, with few exceptions, Israel has not permitted additions to the Palestinian Population Registry;

(e) **Control of the ability of the Palestinian Authority to exercise governmental functions**. Israel exercises control over the ability of the Palestinian Authority to provide services to Gaza and West Bank residents and the functioning of its governmental institutions, including control over the transfer of tax revenues which amount to 50 per cent of the Palestinian Authority's operating income. Moreover, Gaza and the West Bank constitute two parts of a single territorial unit, with a unified and undifferentiated system of civilian institutions spread throughout

[10] See *United States of America v. Wilhelm List et al.* (The *Hostages* Case) United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. III, 1949, p. 56; *Democratic Republic of the Congo v. Uganda, I.C.J. Reports 2005*, paras. 173 and 174.

Gaza and the West Bank, funded from the same central budget and run by the same central authority. Therefore, Israel's continued direct control over the West Bank is a form of indirect control over Gaza.

11. The fact that Gaza remains occupied territory means that Israel's actions towards Gaza must be measured against the standards of international humanitarian law and human rights law.

12. Since June 2006 Israel has engaged in both large-scale military operations and brief military incursions in Gaza.

13. In the course of Operations "Summer Rains" and "Autumn Clouds" between June and November 2006, IDF carried out 364 military incursions into different parts of Gaza, accompanied by persistent artillery shelling and air-to-surface missile attacks. Missiles, shells and bulldozers destroyed, or caused serious damage to, homes, schools, hospitals, mosques, public buildings, bridges, water pipelines and sewage networks. On 27 June the Israeli Air Force destroyed all six transformers of the only domestic power plant in the Gaza Strip, which supplied 43 per cent of Gaza's daily electricity, and this resulted in depriving half of the population of Gaza of electricity for several months. Citrus groves and agricultural lands were levelled by bulldozers. And in the first phase of "Operation Summer Rains" F-16s flew low over Gaza, breaking the sound barrier and causing widespread terror among the population. Thousands of Palestinians were displaced from their homes as a result of Israel's military action.

14. Beit Hanoun in northern Gaza, with a population of 40,000, was subjected to particularly vicious military action in November in the course of "Operation Autumn Clouds". During a six-day incursion 82 Palestinians, at least half of whom were civilians (including 21 children), were killed by IDF. More than 260, including 60 children, were injured and hundreds of males between the ages of 16 and 40 were arrested. Forty thousand residents were confined to their homes as a result of a curfew as Israeli tanks and bulldozers rampaged through the town, destroying 279 homes, an 850-year-old mosque, public buildings, electricity networks, schools and hospitals, levelling orchards and digging up roads, water mains and sewage networks. Israel's assault on Beit Hanoun culminated in the shelling of a home which resulted in the killing of 19 persons and the wounding of 55 persons on 8 November 2006. The house, situated in a densely populated neighbourhood, was the home of the Al-Athamnah family, which lost 16 members on that fateful day. Of the 19 killed, all civilians, seven were women and eight children. Unfortunately, Israel has refused to accept any international investigation into this matter. It refused to allow a Human Rights Council-mandated mission which was to have been led by Archbishop Desmond Tutu to enter Israel and the Occupied Palestinian Territory. The failure of Israel to allow an international investigation of the killing of 19 persons in Beit Hanoun, or to undertake an impartial investigation of its own, is regrettable as it seems clear that the indiscriminate firing of shells into a civilian neighbourhood with no apparent military objective constituted a war crime.

15. There have been sporadic military incursions into Gaza for the past months. In the period 20 to 27 June 2007 there were seven IDF incursions into Gaza resulting in at least 17 Palestinian deaths (including six civilians, among them two children) and 39 injuries. In the period 27 June to 3 July, 19 Palestinians were killed: eight by an IDF tank shell (including a 10-year-old boy), seven by Israeli air strikes, three during armed clashes with IDF soldiers and one of wounds sustained earlier. In

addition 43 Palestinians were injured during IDF operations. On 5 July 11 Palestinians were killed and 25 wounded as a result of an Israeli attack involving aircraft, tanks and bulldozers.

16. Israel has largely justified its attacks and incursions as defensive operations aimed at preventing the launching of Qassam rockets into Israel, the arrest or killing of suspected militants or the destruction of tunnels. Clearly the firing of rockets into Israel by Palestinian militants without any military target, which has resulted in the killing and injury of Israelis, cannot be condoned and constitutes a war crime.[11] Nevertheless, serious questions arise over the proportionality of Israel's military response and its failure to distinguish between military and civilian targets. It is highly arguable that Israel has violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These crimes include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians and civilian objects (articles 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (articles 51 (4) and 51 (5) of Protocol I); the spreading of terror among the civilian population (article 33 of the Fourth Geneva Convention and article 51 (2) of Protocol I); and the destruction of property not justified by military necessity (article 53 of the Fourth Geneva Convention).

17. Gaza has become a besieged and imprisoned territory as a result of the economic sanctions imposed by Israel and the West, following the election success of Hamas in the January 2006 elections, the capture of Corporal Gilad Shalit in June 2006 and the seizure of power by Hamas in June 2007. External borders have been mainly closed and only opened to allow a minimum of imports and exports and foreign travel. This has produced a humanitarian crisis, one carefully managed by Israel, which punishes the people of Gaza without ringing alarm bells in the West. It is a controlled strangulation that seriously violates norms of human rights law and humanitarian law but which apparently falls within the generous limits of international toleration.

18. There are six crossings into Gaza, all of which are controlled by Israel. Rafah, the crossing point for Gazans to Egypt, and Karni, the commercial crossing for the import and export of goods, are the principal crossing points. They are the subject of the Agreement on Movement and Access, which provides for Gazans to travel freely to Egypt through Rafah and for a substantial increase in the number of export trucks through Karni. Since 25 June 2006, following the arrest of Corporal Shalit, and more particularly since mid-June 2007, following the Hamas seizure of power in Gaza, the Rafah crossing has been closed for lengthy periods of time as a result of Israel's refusal to allow members of the European Border Assistance Mission, responsible for operating Rafah, to carry out their task. From mid-June to early August some 6,000 Palestinians were stranded on the Egyptian side of the border, without adequate accommodation or facilities and denied the right to return home. Over 30 people died while waiting. No regard is had to the hardships suffered by ordinary Palestinians by Israel in its decision to close the Rafah crossing. The Karni

[11] See Human Rights Watch, *Indiscriminate Fire. Palestinian Rocket Attacks on Israel and Israeli Shelling in the Gaza Strip* (July 2007).

crossing has likewise been closed for long periods of time during the past 18 months, and more particularly since mid-June 2007.

19. The siege of Gaza has had a major impact on the economy of Gaza. Employment has suffered dramatically. On 9 July 2007 the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) announced that it had halted all its building projects in Gaza because it had run out of building materials, such as cement. This has affected 121,000 jobs of people building new schools, houses, waterworks, and health centres. Eighty per cent of the 3,900 factories operating in Gaza have likewise been compelled to close because of the failure to obtain building materials through the Karni crossing. This has affected the livelihoods of 30,000 people. The border closures have also prevented agricultural products from being exported, depriving farmers of their income. Fishing has virtually come to an end as a result of the ban on fishing along the Gaza coast, rigorously enforced by Israeli gunboats. The public service, while employed in theory, is largely unpaid as a result of Israel's withholding of funds due to the Palestinian Authority. According to the World Bank 3,200 businesses closed in June leaving 65,000 people unemployed.

20. The cancellation of the Gaza customs code by Israeli authorities has also meant that more than 1,300 containers of commercial materials destined for Gaza remain stranded at Israeli ports, and essential items such as milk powder, baby formula and vegetable oil are now in short supply. Military incursions have forced the closure of schools. Eighty-one items on the essential drugs list were out of stock, according to the Palestinian Ministry of Health, because of the financial crisis. Mental health is a serious problem as a result of the trauma inflicted by military incursions.

21. Poverty is rife. Over 90 per cent of the population live below the official poverty line. UNRWA and the World Food Programme provide food assistance to 1.1 million Gazans of a population of 1.4 million. Recipients of food aid receive flour, rice, sugar, sunflower oil, powdered milk and lentils. Few can afford meat, fish (virtually unobtainable anyway as a result of the ban on fishing), vegetables and fruit. Morale is low. The very fabric of Gazan society is threatened by the siege.

22. In a report of 11 July 2007 the World Bank declared that the prolonged closure of Gaza's border crossings could lead to the "irreversible" economic collapse of Gaza. On 19 July Karen AbuZayd, Commissioner-General of UNRWA, warned that without the Karni crossing the Gaza economy will "collapse".

23. Israel's siege of Gaza violates a whole range of obligations under both human rights law and humanitarian law. The International Covenant on Economic, Social and Cultural Rights provisions that everyone has the right to "an adequate standard of living for himself and his family, including adequate food, clothing and housing", freedom from hunger and the right to food (art. 11) and that everyone has the right to health have been seriously infringed. Above all, the Government of Israel has violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement, the closure of crossings and the consequences that these actions have had upon public health, food, family life and the psychological well-being of the Palestinian people constitute a gross form of collective punishment. The capture of

Corporal Shalit and the continuing firing of Qassam rockets into Israel cannot be condoned. On the other hand, they cannot justify the drastic punishment of a whole people in the way that Israel has done.

24. Gaza is no ordinary State upon which other States may freely impose economic sanctions in order to create a humanitarian crisis or take disproportionate military action that endangers the civilian population in the name of self-defence. It is an occupied territory in whose well-being all States have an interest and whose welfare all States are required to promote. According to the advisory opinion of the International Court of Justice on the wall, all States parties to the Fourth Geneva Convention have the obligation "to ensure compliance by Israel with international humanitarian law as embodied in that Convention".[12] Israel has violated obligations of an *erga omnes* character that are the concern of all States and that all States are required to bring to an end. In the first instance, Israel, the occupying Power, is obliged to cease its violations of international humanitarian law. But other States that are a party to the siege of Gaza are likewise in violation of international humanitarian law and obliged to cease their unlawful actions. It is no excuse that Gaza is governed by a "terrorist group". Terrorism is a relative concept, particularly in the context of occupation, as opposition to the occupying Power will always be seen as terrorism by the occupying Power and its accomplices. French resistance fighters were viewed as terrorists by the German occupation, and members of the South West Africa Peoples' Organization that opposed South Africa's occupation of Namibia were seen as terrorists by the South African regime. Today such resistance fighters are seen as heroes and patriots. This is the inevitable consequence of resistance to occupation.

IV. Human rights in the West Bank and East Jerusalem

25. The human rights situation in the West Bank has possibly improved since mid-June. The takeover of Gaza by Hamas has resulted in a new rapprochement between the emergency Government of President Abbas, under the prime ministership of Salam Fayyad, and Israel, the United States and the Quartet. This has taken several forms:

- the release of 255 Palestinian prisoners, mainly belonging to Fatah;
- the release of $119 million of Palestinian tax funds seized by Israel after the election success of Hamas in January 2006;
- the granting of amnesty to 178 Fatah militants wanted by Israel;
- promises, as yet unfulfilled, to cease military incursions into the West Bank, reduce checkpoints and remove settler outposts;
- the offer of $190 million in aid by the United States;
- the blessing of the Quartet which in a statement on 19 July expressed support for the Palestinian Government headed by Mr. Fayyad and encouraging direct and rapid financial assistance to his Government "to help reform, preserve and strengthen vital Palestinian institutions and infrastructure, and to support the rule of law".

[12] *Advisory Opinion*, op. cit., para. 159.

26. The new support for Mr. Fayyad's Government in the West Bank has not, however, succeeded in removing or even softening Israel's ideological infrastructure that most seriously violates human rights in the West Bank. The construction of the wall (or Barrier) continues; settlements continue to expand; checkpoints remain in force; the Judaization of Jerusalem continues; and the de facto annexation of the Jordan Valley is unaffected. Moreover, at the time of writing military incursions into the West Bank continue unabated, albeit directed principally at Hamas, as do home demolitions.

A. The wall

1. General

27. The wall that Israel is at present building largely in Palestinian territory is clearly illegal. The International Court of Justice in its advisory opinion of 9 July 2004 found that it is contrary to international law and that Israel is under obligation to discontinue construction of the wall and to dismantle those sections that have already been built forthwith. Israel has abandoned its claim that the wall is a security measure only and now concedes that one of the purposes of the wall is to include settlements within Israel. The fact that 76 per cent of the West Bank settler population is enclosed within the wall bears this out.

28. The wall is planned to extend for 721 km. At present 59 per cent of the wall has been completed. Two hundred kilometres of the wall have been constructed since the International Court of Justice handed down its advisory opinion declaring the wall to be illegal. When the wall is finished, an estimated 60,000 West Bank Palestinians living in 42 villages and towns will reside in the closed zone between the wall and the Green Line. This area will constitute 10.2 per cent of Palestinian land in the West Bank. More than 500,000 Palestinians living within 1 km of the wall live on the eastern side but need to cross it to get to their farms and jobs and to maintain family connections. Eighty per cent of the wall is built within the Palestinian territory itself and in order to incorporate the Ariel settlement bloc, it extends some 22 km into the West Bank. The closed zone includes many of the West Bank's most valuable water resources. Completion of the wall around the Ma'aleh Adumim bloc will separate East Jerusalem from the rest of the West Bank, restricting access to workplaces, health, education, and to places of worship. Further south, the route of the wall around the Gush Etzion settlement bloc will sever the last route between Bethlehem and Jerusalem and isolate the majority of Bethlehem's agricultural hinterland.

29. The wall has serious humanitarian consequences for Palestinians living within the closed zone (the area between the Green Line and the wall). They are cut off from places of employment, schools, universities and specialized medical care and community life is seriously fragmented. Moreover, they do not have 24-hour access to emergency health services. Palestinians who live on the eastern side of the wall but whose land lies in the closed zone face serious economic hardship as a result of the fact that they are not able to reach their land to harvest crops or to graze their animals without permits. Permits are not easily granted. A host of obstacles are placed in the way of obtaining a permit. Bureaucratic procedures for obtaining permits are humiliating and obstructive. The Office for the Coordination of Humanitarian Affairs has estimated that 60 per cent of the farming families with

land to the west of the wall could no longer access their land. To aggravate matters the opening and closing of the gates leading to the closed zone are regulated in a highly arbitrary manner: in November 2006 the Office carried out a survey in 57 communities located close to the wall which showed that only 26 of the 61 gates in the wall were open to Palestinians for use all the year round and that these gates were only open for 64 per cent of the officially stated time. Hardships experienced by Palestinians living within the closed zone and in the precincts of the wall have already resulted in the displacement of some 15,000 persons.

2. East Jerusalem

30. The 75-km wall being built in East Jerusalem is now almost complete, except for a 200-m section between Dahiyat and Beit Hanina. This wall, which is built through Palestinian neighbourhoods and separates Palestinians from Palestinians, is an exercise in social engineering, designed to achieve the Judaization of Jerusalem by reducing the number of Palestinians in the city. It cannot conceivably be justified on security grounds.

3. Compensation for damage caused by the construction of the wall

31. In its 2004 advisory opinion the International Court of Justice held that Israel has the obligation to make reparations for the damage caused to Palestinians by the construction of the wall. Where restitution of property is not possible, stated the Court, Israel "has an obligation to compensate, in accordance with the applicable rules of international law, all natural and legal persons having suffered any form of material damage as a result of the wall's construction".[13] In 2004 the General Assembly directed the establishment of a United Nations Register of Damages Caused by the Construction of the Wall in the Occupied Palestinian Territory and the establishment of a board to administer this register. As this decision was not implemented for more than two years, on 15 December 2006 the General Assembly at its tenth emergency special session, in resolution ES-10/17, requested the Secretary-General to report within six months on the progress made in this respect. In compliance with this request the Secretary-General appointed, on 10 May 2007, Harumi Hori of Japan, Matti Paavo Pellonpää of Finland and Michael F. Raboin of the United States to membership of the Board. The Board met from 14 to 16 May 2007 and plans to meet again in August/September.

32. Compensation for violation of the human rights of Palestinians and the violation of rules of international humanitarian law arising from the construction of the wall is a human rights issue which clearly falls within the present Special Rapporteur's mandate. The Special Rapporteur shares the concerns expressed by stakeholders and civil society about the Board and its functions. First, there is the opaque manner in which the Board was appointed. Many United Nations officers who hold similar positions are elected to office; others are appointed after wide consultation. The failure of the Secretary-General to employ a more transparent method of appointment, coupled with the fact that all the members of the Board, however well qualified they undoubtedly are, are nationals of States from the North with close relations with Israel, inevitably means that members of the Board will have to overcome the misgivings of stakeholders and civil society. Secondly, there are serious doubts about how the Board will perceive its role. What criteria will it

[13] *Advisory Opinion*, op. cit., paras 152-153.

adopt for eligibility and verification of claims? Will it consider non-material damages such as the effects on mental health and family life? Or will it confine itself to material damage? Will it insist on gaining access to the Occupied Palestinian Territory to fully assess the damages involved? Or will it defer to Israel when it is refused access? Will it ensure that Palestinians are informed about their right to claim? Will there be consultation with civil society?

B. Settlements and settlers

33. There are some 140 Israeli settlements and 100 settlement "outposts" (unauthorized but State-sponsored and funded by Government ministries) established in the West Bank, including East Jerusalem. These settlements are illegal as they violate article 49, paragraph 6, of the Fourth Geneva Convention. Their illegality has been unanimously confirmed by the International Court of Justice in the advisory opinion on the wall. Despite the illegality of settlements and the unanimous condemnation of settlements by the international community, the Government of Israel persists in allowing settlements to grow. Sometimes settlement expansion occurs openly and with the full approval of the Government. In 2007 the Jerusalem Municipality Planning Committee approved plans to build three new settlements in East Jerusalem, one south of Ramallah and two north-west of Bethlehem. More frequently, expansion takes place stealthily under the guise of "natural growth", which has resulted in Israeli settlements growing at an average rate of 5.5 per cent compared with the average growth rate in Israeli cities of 1.7 per cent. Sometimes settlements expand unlawfully in terms of Israeli law, but no attempt is made to enforce the law. Outposts, a prelude to the establishment of settlements, are frequently established and threats to remove them are not carried out. Most outposts have been established in the past six years. As a result of expansion, the settler population in the West Bank numbers some 260,000 persons and that of East Jerusalem over 200,000. As indicated above, the wall is presently being built in both the West Bank and East Jerusalem to ensure that most settlements will be enclosed within the wall. Moreover, the three major settlement blocs of Gush Etzion, Ma'aleh Adumim and Ariel will effectively divide Palestinian territory into cantons, thereby destroying the territorial integrity of Palestine.

34. In October 2006, the Israeli NGO Peace Now published a study which showed, on the basis of official maps and figures, that nearly 40 per cent of the land held by Israeli settlements in the West Bank is privately owned by Palestinians. The data show, for example, that 86 per cent of the largest settlement of Ma'aleh Adumim is on Palestinian private property; that 35 per cent of Ariel is on private property; and that more than 3,400 buildings in settlements are constructed on land privately owned by Palestinians. On 6 July 2007 Peace Now published another study, based on official data released by the Government of Israel following a court order, which revealed that settlements use only 12 per cent of the land allocated to them, but one third of the territory they do use lies outside their official jurisdictions. Ninety per cent of the settlements extend beyond their official boundaries despite the amount of unused land already allocated to them. These findings attest to the Government's ongoing cooperation with the settlements' expansion. On the one hand, the State earmarks huge tracts for the settlements, out of all proportion to their size, in order to prevent Palestinian construction in those areas. Yet once an area is closed to

Palestinians, the settlers begin seizing adjacent Palestinian lands, often privately owned, that lie outside their jurisdiction.

C. The Jordan Valley

35. Israel has abandoned earlier plans to build the wall along the spine of the Occupied Palestinian Territory and to formally appropriate the Jordan Valley. It has nevertheless asserted its control over this region, which constitutes 25 per cent of the West Bank, in much the same way as it has done over the closed zone between the wall and the Green Line on Palestine's western border. That Israel intends to remain permanently in the Jordan Valley is clear from Government statements and is further manifested, first, by restrictions imposed on Palestinians and, second, by the exercise of Israeli control and the increase in the number of settlements in the Jordan Valley.

36. Palestinians living in the Jordan Valley must possess identity cards with a Jordan Valley address and only those persons may travel within the Jordan Valley without Israeli permits. Other Palestinians, including non-resident landowners and workers, must obtain permits to enter the Jordan Valley and in practice such permits are not valid for overnight stays, necessitating daily commuting and delays at checkpoints connecting the Jordan Valley with the rest of the West Bank. This has led to the isolation of the Jordan Valley.

D. Checkpoints and roadblocks as obstacles to freedom of movement

37. Checkpoints and roadblocks seriously obstruct the freedom of movement of Palestinians in the West Bank, with disastrous consequences for both personal life and the economy. There are some 550 such obstacles to freedom of movement, comprising over 80 manned checkpoints and some 470 unmanned locked gates, earth mounds, concrete blocks and ditches. In addition, thousands of temporary checkpoints, known as "flying checkpoints", are set up every year by Israeli army patrols on roads throughout the West Bank for limited periods, ranging from half an hour to several hours. In 2006 a total of some 7,000 such flying checkpoints was recorded.[14] In June 2007 there were 488 flying checkpoints and in July 2007 there were 409 such checkpoints. Checkpoints divide the West Bank into four distinct areas: the north (Nablus, Jenin and Tulkarem), the centre (Ramallah), and the south (Hebron) and East Jerusalem. Within these areas further enclaves have been created by a system of checkpoints and roadblocks. Moreover highways for the use of Israelis only further fragment the Occupied Palestinian Territory into 10 small cantons or Bantustans. Cities are cut off from each other as a permit is required to travel from one area to another and permits are difficult to obtain. Checkpoints largely serve the interests of settlers in the sense that they are generally established near to settlements or near to settler bypass roads.

38. Checkpoints and the poor quality of secondary roads Palestinians are obliged to use, in order to leave the main roads free for settler use, result in journeys that previously took 10 to 20 minutes taking two to three hours. Israel justifies these

[14] Amnesty International, *Enduring Occupation. Palestinians under Siege in the West Bank* (June 2007), p. 16.

measures, together with the behaviour of its soldiers at checkpoints, on security grounds and claims that they have succeeded in thwarting the passage of numerous would-be suicide bombers. There is, however, another security perspective. Palestinians perceive these measures to be designed, first, to serve the convenience of settlers and to facilitate their travel through the West Bank without having to make contact with Palestinians, and, secondly, to humiliate Palestinians by treating them as inferior human beings. The result is a suppressed anger that in the long term poses a greater threat to the security of Israel.

E. Military incursions

39. Since the election of the Hamas Government in January 2006, IDF has intensified its military incursions in the West Bank. These military raids, numbering several hundred each month (641 in July 2007), have resulted in the killing of some 200 Palestinians and injury to over a thousand, searches resulting in substantial damage to property, and several hundred arrests each month. The Government of Israel has announced, following the takeover of Gaza by Hamas, that as a gesture of goodwill to the Government of Mr. Fayyad, it would discontinue its military incursions into the West Bank. To date there is no evidence of such a discontinuation. IDF military incursions resulting in death, injury, arrests and damage to property remain a regular feature of life in the West Bank.

F. Humanitarian situation

40. The construction of the wall, the expansion of settlements, the restrictions on freedom of movement, house demolitions and military incursions have had a disastrous impact on the economy, health, education, family life and standard of living of Palestinians in the West Bank. Since 2006 the situation has deteriorated further as a result of two factors: first, Israel's withholding of taxes which it collects on behalf of the Palestinian Authority on all goods imported into the Occupied Palestinian Territory, amounting to $50-60 million per month (about half of the budget of the Palestinian Authority); second, the sanctions regime imposed by the United States, the European Union and other Western States (implicitly approved by the Quartet) which has taken the form of the discontinuation of aid and banking restrictions on the transfer of money to the Palestinian Authority and other Palestinian institutions. According to Karen AbuZayd, the Commissioner-General of UNRWA:

> There is a staggering irony in the contrast between the universal commitment to poverty eradication (expressed in the UN Millennium Development Declaration) and the decision to impose on Palestinians one of the most severe sanctions regimes in recent history, thereby virtually guaranteeing the widespread incidence of extreme poverty.[15]

41. In the past month Israel has transferred $119 million of the tax money it has unlawfully seized to the Palestinian Authority and Western States and the Quartet have promised to recommence funding to the Palestinian Authority (insofar as it does not further the interests of Hamas in Gaza). At the time of writing no material

[15] Speech delivered at the Woodrow Wilson Institute, Washington, D.C., on 22 May 2007.

change is discernible in the humanitarian situation in the West Bank as a result of the continuing occupation, the human rights violations described in this section of the report and Israel's refusal to transfer all the tax moneys in law due to the Palestinian Authority. Poverty and unemployment are at their highest levels yet; health and education are undermined by military incursions, the wall and checkpoints; and the social fabric of society is threatened.

Conclusion

42. The situation in the West Bank may not be as serious as that of Gaza. However, it is all a question of degree. Moreover, as in Gaza, the serious humanitarian situation in the West Bank is largely the result of Israel's violations of international law. The wall violates norms of international humanitarian law and human rights law, according to the International Court of Justice; settlements violate the Fourth Geneva Convention; checkpoints violate the freedom of movement proclaimed in human rights conventions; house demolitions violate the Fourth Geneva Convention; the humanitarian crisis in the West Bank, brought about by Israel's withholding of Palestinian tax money and other violations of international law, violates many of the rights contained in the International Covenant on Economic, Social and Cultural Rights. As in Gaza, Israel's actions constitute an unlawful collective punishment of the Palestinian people.

V. Violation of the prohibition on arbitrary detention, inhuman treatment and extrajudicial executions

Prisoners

43. There are over 10,000 Palestinian political prisoners in Israeli jails, including 116 women and 380 children. In July 2007, 255 prisoners, belonging mainly to Fatah, were released. As IDF continues to arrest substantial numbers of Palestinians in military incursions in the West Bank and Gaza every day, this prisoner release can only be seen as a very small step in the right direction. (In July 2007, 391 Palestinians were arrested: 354 in the West Bank and 37 in Gaza.)

Inhuman treatment

44. Serious complaints about the treatment of pre-trial detainees and imprisoned persons continue to be heard. In April 2007 two Israeli NGOs — Hamoked (Centre for the Defence of the Individual) and B'Tselem (The Israeli Information Centre for Human Rights in the Occupied Territories) — published a report on torture and ill-treatment of Palestinian detainees which showed that arrested persons were subjected to beatings, humiliated and deprived of basic needs and that persons suspected of having information that could prevent attacks (so-called "ticking bomb suspects") were deprived of sleep for more than 24 hours, beaten and subjected to physical ill-treatment.[16] This treatment certainly amounts to inhuman and degrading treatment and possibly to torture.

[16] *Utterly Forbidden. The Torture and Ill-Treatment of Palestinian Detainees* (April 2007).

Extrajudicial executions or targeted assassinations

45. The IDF continue to assassinate suspected militants by targeting them with rockets. Since 2000 some 500 Palestinians, including many innocent bystanders, have been killed in this way. This practice makes a mockery of Israel's claim to have abolished the death penalty.

VI. The role of the United Nations in the protection of human rights in the Occupied Palestinian Territory

46. The United Nations is the ultimate protector of human rights in the international community, with its agencies, personnel and political institutions committed to this end. In Occupied Palestinian Territory agencies such as UNRWA, OCHA, the United Nations Development Programme, the Office of the High Commissioner for Human Rights, the World Food Programme, the World Bank, the United Nations Children's Fund, the World Health Organization, the International Labour Organization and the Food and Agriculture Organization of the United Nations are committed to promoting development and protecting human rights. Dedicated personnel pursue the ideals of the Charter of the United Nations in providing help for a people under occupation. Indeed, it is difficult to imagine how Palestinians could survive without the assistance of bodies such as UNRWA. Unfortunately, the story at the high political level in New York is very different.

47. The Security Council has largely relinquished its powers in respect of the Occupied Palestinian Territory in favour of an amorphous body known as the Quartet, comprising the United Nations, the European Union, the Russian Federation and the United States. The Quartet was informally set up in 2003 without a founding resolution or mandate from either the Security Council or the General Assembly, with the task of promoting peace in accordance with a road map for peace, to which Israel has attached 14 reservations and which is now hopelessly out of date. In his May 2007 end of mission report, Alvaro de Soto, former United Nations Special Coordinator for the Middle East Peace Process and United Nations Envoy to the Quartet, stated that "as a practical matter, the Quartet is pretty much a group of friends of the US — and the US doesn't feel the need to consult closely with the Quartet except when it suits it." (para. 63). Despite its dubious constitutionality and the questionable legality of its actions, the Quartet remains unchallenged by the Security Council or the General Assembly.

48. The Quartet does not see it as its function to promote respect for human rights, international humanitarian law, the advisory opinion of the International Court of Justice, international law or countless United Nations resolutions on the subject of the Occupied Palestinian Territory. Regular statements by the Quartet make mildly critical reference to the expansion of settlements and the humanitarian situation in the Occupied Palestinian Territory but condemnation of Israel's continuing occupation, and its violations of international humanitarian law (primarily the Fourth Geneva Convention) and human rights is not forthcoming. Moreover, the Quartet has yet to even mention the Advisory Opinion of the International Court of Justice. Since January 2006 the Occupied Palestinian Territory has been subjected to economic sanctions in the form of the termination of donor aid, the imposition of banking restrictions and the seizure of tax moneys. The United States, the European Union and Israel must take direct responsibility for these actions but the Quartet

must accept indirect responsibility.[17] Most recently, the Quartet has embarked on a course hostile to Palestinian self-determination by giving support to one Palestinian faction, Fatah, at the expense of the other, Hamas, and by making no attempt to restore the unity of the Palestinian people.[18] In the process Gaza seems to have been simply abandoned by the Quartet.

49. The actions of the United States and the European Union within the Quartet can be explained in terms of their own domestic political constituencies and constraints. The Russian Federation seems to be uneasy about its membership of the Quartet and attempts to pursue, without success, an even-handed approach to the situation in the Occupied Palestinian Territory. What then is the position of the United Nations, the guardian of legitimacy enshrined in the Charter, and representative not only of the opinions of the five permanent members of the Security Council but of all 192 members of the Organization? Sadly, the United Nations, acting through the Secretary-General, has ignored the views of the majority of its members and abandoned its role as guardian of international legitimacy. Instead of promoting Palestinian self-determination, striving to end the occupation and opposing the ongoing violation of human rights, the United Nations has chosen to give legitimacy to the statements and actions of the Quartet. The situation is well described by Alvaro de Soto in his end of mission report:

> [The Secretary-General] is being used to provide the appearance of an imprimatur on behalf of the international community for the Quartet's positions. This in itself is awkward since the Secretary-General participates in the Quartet not by delegation or mandate from any UN body, leave alone the Security Council, but in his semi-stand-alone capacity. There are large segments of the international community not represented in the self-appointed Quartet, including the Arab shareholders. Nevertheless, I could live with the arrangements until the point came when the Quartet started taking positions which are not likely to gather a majority in UN bodies, and which in any case are at odds with the UN Security Council resolutions and/or international law or, when they aren't expressly so, fall short of the minimum of even-handedness that must be the lifeblood of the diplomatic action of the Secretary-General. (para. 69)

50. For the past few years the Special Rapporteur has appealed in his reports to the Quartet to show more even-handedness and respect for human rights and the rule of law in both their actions and their utterances. These appeals have been ignored. Now, the former Under-Secretary-General, Special Coordinator for the Middle East

---

[17] In his end of mission report of May 2007 Alvaro de Soto states:

> "Strictly speaking it is not the Quartet as such which has reviewed assistance, circumvented the PA and shifted aid to the preponderantly humanitarian, imposed stifling banking restrictions or deprived the Palestinians of their main source of income. It is, respectively, the US and the EU and Israel who must take responsibility for these actions. Due to the amendments to which our Quartet partners agreed in January 2006, we are able to say that none of these measures emanate directly from Quartet decisions, and to dissociate ourselves from those measures or openly criticize them (Israeli non-transfer of Palestinian money to the PA). And we do so. But in the wide-angle lens of Palestinian and Arab public opinion this is verbal prestidigitation, and it doesn't wash. By our association with all that has been inflicted on the Palestinians since the beginning of 2006 we are guilty as charged in the court of Palestinian and Arab public opinion." (para. 78).

[18] This is clear from the Quartet's statement of 19 July 2007.

Peace Process and Envoy to the Quartet has spoken in stronger language, accusing the Quartet of being led (and coerced) by the United States into adopting positions at odds with the ideals of the Charter, and calling upon the Secretary-General to seriously reconsider continued United Nations membership in the Quartet. In effect, this message has been ignored and the messenger shot.[19]

VII. Recommendations

51. The recommendations or appeals set out below are made to Israel, Palestinian armed groups, States members of the United Nations and the United Nations itself.

To Israel

52. Israel's occupation of the West Bank, East Jerusalem and Gaza is now in its fortieth year. This occupation, which has resulted in numerous violations of international humanitarian law and human rights law, has seriously undermined the integrity and reputation of the State of Israel. Israel is urged to enter into serious negotiations with the Palestinian Authority to bring about the creation of a Palestinian State within the 1967 borders of the Palestinian entity, to end the occupation of the Palestinian Territory and to respect international humanitarian law and human rights law in its dealings with the Palestinian people.

To Palestinian militant groups

53. Palestinian militant groups are urged to end their attacks on civilian targets and comply with international humanitarian law, both within the Occupied Palestinian Territory and Israel.

To States Members of the United Nations

54. States Members of the United Nations are urged to bring pressure on the Quartet to act in an even-handed manner with due respect for human rights and international humanitarian law. They are also urged, as parties to the Fourth Geneva Convention, to ensure that Israel complies with international humanitarian law as embodied in that Convention. (This obligation is affirmed by the International Court of Justice in its advisory opinion on the wall.[20])

To the United Nations (particularly the Secretary-General)

55. The Secretary-General is urged, as representative of the United Nations in the Quartet, to ensure that the Quartet:

(a) Condemns Israel's violations of international humanitarian law and human rights law (described in the present report) and take measures to ensure that Israel complies with its obligations in this respect;

[19] See the statement by Secretary-General Ban Ki-moon at a press conference on 13 June 2007.

[20] *Advisory Opinion*, op. cit., para. 159.

(b) Accepts the 2004 advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* as a juridical basis for its dealings with Israel;

(c) Presses Israel to immediately transfer to the Palestinian Authority all the value added tax and customs duties that it has collected on behalf of the Palestinians in order to ameliorate the humanitarian crisis that prevails in the Occupied Palestinian Territory;

(d) Adopts a fair and even-handed approach to the respective positions of Israel and the Palestinians;

(e) Adopts a fair and even-handed approach to different factions within the Palestinian community, as the United Nations has done in other comparable conflict situations,[21] so that Palestinian self-determination is achieved.

56. **If the Secretary-General is unsuccessful in persuading the Quartet to act as proposed above, the United Nations should cease to give its imprimatur to the actions of the Quartet and should withdraw from the Quartet.**

To the United Nations (particularly the General Assembly)

57. **The General Assembly is urged to request the International Court of Justice to give a further advisory opinion on the legal consequences for the occupied people, the occupying Power and third States of prolonged occupation (see also paragraph 8 above.)**

---

[21] On this subject it is necessary to quote a passage from the speech by Karen AbuZayd, UNRWA Commissioner-General, to the Woodrow Wilson Institute in Washington, D.C., on 22 May 2007):

> "A further discrepancy can be identified in the area of the international community's approach to the Israeli-Palestinian conflict. The presently moribund state of the peace process is the direct result of a policy to isolate a particular party, regardless of the fact that it happens to command a significant constituency. The policy of isolation is arguably at odds with the UN Charter's vision of a system of collective security that is founded on the peaceful settlement of disputes, mutual restraint in the use of armed force and joint action to address threats to international peace and security. Our policy to exclude one side is also at variance with the approach that the international community has successfully pursued in resolving other armed conflicts. In some notable and rather well-known recent examples in western Europe and South Asia, neither the terrorist epithet, nor the fact of continuing and even escalating armed conflict deterred mediators from engaging the protagonists and continuing to press for a solution ... Many successful peace negotiations proceeded on the basis of the mediators' neutrality, inclusiveness and abstention from passing moral or political judgment on either party's eligibility to be present at the table."